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14 **IN THE UNITED STATES DISTRICT COURT**

15 **FOR THE DISTRICT OF ARIZONA**

16 James Whitener,

17 Plaintiff,

18 v.

19 Icarizona Hockey Co., LLC.; JOHN DOES 1-
20 10; JANE DOES 1-10; ABC Corporations 1-
21 10; XYZ Entities I-10; 123 Partnerships, 1-10,

22 Defendants.

No.

COMPLAINT

23 Plaintiff alleges:

24 1. This case arises out of Defendant Icarizona Hockey Co, LLC's
25 ("Defendant" or "Arizona Coyotes") unlawful employment practices. Specifically, the
26 Arizona Coyotes unlawfully classified employees, including Plaintiff, and failed to pay
overtime compensation in violation of the Fair Labor Standards Act ("FLSA") 29. U.S.C.

1 8. Defendant Icarizona Hockey Co, LLC operates under its trademarked
2 name “Arizona Coyotes” and is a corporation authorized to conduct business in Arizona
3 and is within the jurisdiction of this Court. Defendant’s principal place of business is
4 located in Glendale, Arizona. Defendants John Does 1-10, Jane Does 1-10, ABC
5 Corporations 1-10, XYZ Entities 1-10; and 123 Partnerships 1-10 are fictitious names,
6 representing Defendants who have, or may have, liability for some or all of the events
7 giving rise to this litigation. The true names and identities of the fictitious Defendants are
8 presently unknown but will be substituted later by amendment.
9

10
11 9. Defendant is an “employer” within the meaning of 29. U.S.C. § 203(d).
12

13 **GENERAL ALLEGATIONS**

14 10. Defendant Arizona Coyotes is a professional hockey team in the National
15 Hockey League (NHL), and Defendant employed Plaintiff in ticket sales, wherein
16 Plaintiff worked in the “Premium Seating” sales department from his hire date of
17 September 16, 2011 to May 31, 2017.
18

19 11. During his employment with Defendant, pursuant to Defendant’s policy and
20 pattern of practice, Plaintiff regularly worked for Defendant’s benefit for periods of time
21 in excess of 40 hours in a workweek without compensation. Defendant did not pay
22 Plaintiff overtime compensation for hours worked for Defendant’s benefit as required by
23 the FLSA.
24

25 12. Defendant has intentionally, willfully, and repeatedly engaged in a pattern,
26

1 practice and/or policy of violating the FLSA, including but not limited to:

- 2 a) willfully failing to record all time that Plaintiff has worked for the
- 3 benefit of Defendant;
- 4 b) willfully failing to keep records as required by the FLSA
- 5 c) willfully misclassifying Plaintiff as exempt from the overtime
- 6 requirements of the FLSA
- 7 d) willfully failing to pay Plaintiff overtime wages for hours he worked in
- 8 excess of 40 hours per week.
- 9

10
11 13. The primary duties of Plaintiff were to sell premium products to
12 Defendant's customers, which include glass seats, suite level club seating, loge boxes and
13 tables, and suites and suite packages. Plaintiff's performance success and compensation
14 depended on selling a certain number of premium products to Defendant's customers.
15

16 14. As part of his job duties, Plaintiff regularly performed the following job
17 duties: making sales and marketing calls and communications to both current and
18 prospective customers, telephone and internet response to customer requests and issues,
19 communicating with customers regarding Defendant's products, and attending
20 Defendant's meetings and events to fulfill customer demands and expectations for the
21 benefit of Defendant.
22

23
24 15. Plaintiff primarily performed his duties at the Defendant's place of business
25 and was not regularly and customarily engaged away from Defendant's place of business.
26

16. Plaintiff frequently arrived at his office, located at Defendant's principal place of business, at 6:30 a.m. and remained at Defendant's principal place of business until 6:30 p.m. During these hours, Plaintiff performed those duties as stated in paragraph 14 above. Additionally, Plaintiff often was required, as part of his job duties, to return to Defendant's place of business after hours and/or on weekends to attend to Defendant's customers during events being held at Defendant's place of business.

17. Defendant had knowledge that Plaintiff routinely and customarily performed his job duties at Defendant's principal place of business, and, worked in excess of forty (40) hours per week.

18. During his employment with Defendant, pursuant to Defendant's policy and pattern of practice, Plaintiff regularly worked for Defendant's benefit for periods of time in excess of 40 hours in a workweek without compensation.

19. Defendant was or should have been aware that state and federal law required it to properly classify Plaintiff as non-exempt and to pay Plaintiff overtime wages for hours worked in excess of forty per week, Defendant's failure to pay overtime wages was willful and without justification.

COUNT ONE
VIOLATION OF THE FLSA

20. Plaintiff realleges and incorporates all allegations in all preceding paragraphs as if fully set forth.

21. Defendant has engaged in a widespread pattern and practice of violating the

1 FLSA, as set forth herein.

2 22. Plaintiff has consented in writing to be a party to this action, pursuant to 29
3 U.S.C. § 216(b).
4

5 23. Plaintiff was entitled to be paid one and one-half times his hourly rate for
6 each hour worked in excess of forty hours per workweek and to have such overtime
7 compensation calculated in accordance with Federal Regulations to include
8 commission/bonus payments earned in the appropriate workweek in the calculation of the
9 regular rate for the purposes of determining overtime compensation entitlement.
10

11 24. In the course of employment with Defendant, Plaintiff worked the number
12 of hours required of him, many times in excess of forty hours, but was not properly paid
13 overtime compensation.
14

15 25. The pay practices of Defendant, as described in the above paragraphs,
16 violated the FLSA by willfully and intentionally misclassifying Plaintiff as exempt from
17 overtime pay and willfully and intentionally failing to properly pay overtime to Plaintiff
18 for those hours worked each workweek in excess of forty hours.
19

20 26. Defendant's violations of the FLSA are willful and intentional. Defendant
21 did not make a good faith effort to comply with the FLSA with respect to its
22 compensation of Plaintiff.
23

24 27. Because of Defendant's willful and unlawful acts, a three year statute of
25
26

1 limitations applies, pursuant to 29 U.S.C. § 255 and Plaintiff has been harmed and
2 suffered damages by being denied overtime wages in accordance with the FLSA, plus
3 incurred costs and reasonable attorneys' fees.
4

5 28. As a result of Defendant's violations of the FLSA, Plaintiff is entitled to
6 recovery of overtime wages, liquidated damages in an amount equal to the wages he is
7 owed as unpaid overtime, prejudgment interest, attorneys' fees, costs and other
8 compensation pursuant to 29 U.S.C. § 216(b).
9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, James Whitener, prays that judgment be entered against
12 Defendant and that the Court award the following relief including but not limited to:
13

- 14 A. An Order declaring that Defendant has violated the FLSA;
15 B. Judgment for Plaintiff against Defendant for the wages and overtime payments due
16 him for the hours worked by him for Defendant without proper compensation;
17 C. Judgment for Plaintiff against Defendant for liquidated damages;
18 D. An order awarding or otherwise providing Plaintiff all other such equitable and
19 legal relief to which Plaintiff is entitled whether or not specified herein;
20 E. An order awarding Plaintiff reasonable attorneys' fees along with costs pursuant to
21 29 U.S.C. § 216(b) and/or common law;
22 F. Any and all other relief the Court deems just and proper.
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25 PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE
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DATED this 16th day of June, 2017.

YEN PILCH & LANDEEN, P.C.

By: /s/ Neil Landeen
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